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| 10/055,474      | 01/23/2002  | James L. Tracy       | CM02045K            | 6374             |

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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
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DATE MAILED: 04/15/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

|  |                                      |                                     |  |
|--|--------------------------------------|-------------------------------------|--|
| <b>Notification of Non-Compliant Appeal Brief<br/>(37 CFR 41.37)</b> | <b>Application No.</b><br>10/055,474 | <b>Applicant(s)</b><br>TRACY ET AL. |  |
|  | <b>Examiner</b><br>Jeff Piziali      | <b>Art Unit</b><br>2629             |  |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 28 January 2008 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☒ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/Jeff Piziali/  
Primary Examiner, Art Unit 2629  
2 April 2008

Continuation of 10. Other (including any explanation in support of the above items):

The Appellant is thanked for the Appeal Brief filed 28 January 2008. However, a non-compliant matter has been discovered in the aforementioned response, requiring attention before examination may continue.

37 C.F.R. § 41.37(c)(1)(ix) requires, "An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal."

The Appeal Brief filed 28 January 2008 improperly neglects to provide copies of evidence relied upon by Appellant in the appeal (e.g., see at least Page 19 of the Appeal Brief filed 28 January 2008).

The Appellant is respectfully encouraged to provide copies of evidence relied upon in the appeal, as required by 37 C.F.R. § 41.37.

Additionally, MPEP § 1205.02 requires, "An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to 37 CFR 41.37(c)(1)(ii). The appendix should start on a new page. If there are no such copies of decisions being submitted in the appeal, then a related proceedings appendix should be included with the indication 'none.'"

The Appeal Brief filed 28 January 2008 improperly neglects to provide the 'Related Proceedings Appendix' on a new page (e.g., see at least Page 19 of the Appeal Brief filed 28 January 2008).

The Appellant is respectfully encouraged to provide the 'Related Proceedings Appendix' on a new page, as required by 37 C.F.R. § 41.37 and MPEP § 1205.02.

By such reasoning, this Notification of Non-Compliant Appeal Brief is deemed necessary and proper at this time.

Please note: The Appeal Brief has not been checked to the extent necessary to determine the presence of all possible non-compliance errors. If additional issues of non-compliance are discovered at the time of a subsequent Appeal Brief, yet another Notification of Non-Compliant Appeal Brief will be necessitated. Appellant's cooperation is requested in correcting any other errors of which Appellant may become aware.

/Jeff Piziali/  
Primary Examiner, Art Unit 2629  
2 April 2008